



RAVALLI COUNTY ATTORNEY

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October 22, 2007

RECEIVED

OCT 23 2007

David T. Markette, Esq.
P.O. Box 515
Hamilton, MT. 59840

Ravalli County Commissioners

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Re: Dobberstein

Dear David:

I have enclosed a copy of a draft petition for the abatement of the Dobbersteins' illegal road encroachment. I am sending this to you and your client as a courtesy prior to filing it. I would certainly prefer to resolve this problem without any of us having to go through the expense and trouble of litigation, though I am quite certain that the county is in the right and will prevail on this matter if it comes to that. I think you will find the legal status of Meridian Road is irrelevant to this question, as that section of Meridian clearly has a public prescriptive easement and is very much a "public right of way under the jurisdiction of Ravalli County."

Please talk this over with the Dobbersteins. If nothing else, I hope we can agree that while Angelika is an owner of record of the parcel that Tom is the only necessary party. I have no interest in suing anybody's wife, especially when they are not legitimately involved. I would gladly modify the complaint to just Tom, so long as we can agree on that. As I may have mentioned, my wife is due next week and I will be taking two weeks off after the birth. As such, I will gladly give the Dobbersteins until my return, which will probably be around November 15th to make up their mind. However, if we do not have an agreement to remove the encroachment by then, a petition very similar to this will be filed. Please give me a call if you think there is hope here.

Sincerely,

Alex Beal

Deputy Ravalli County Attorney

AB/dp

cc: Ravalli County Road and Bridge Department (w/enclosure)
Ravalli County Commissioners (w/enclosure)

1 GEORGE H. CORN
2 Ravalli County Attorney
3 Alex Beal
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5 Ravalli County Courthouse
6 205 Bedford Street, Suite C
7 Hamilton, MT 59840

Attorneys for Plaintiffs

DRAFT

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

8 STATE OF MONTANA & RAVALLI)
9 COUNTY,)

10 Plaintiffs,)

11 vs.)

12 TOMMY & ANGELIKA DOBBERSTEIN,)

13 Defendants.)

Cause No. DV 07-____

Dept. ____

**PETITION FOR ABATEMENT OF
ROAD ENCROACHMENT**

14 COMES NOW the Plaintiffs, The State of Montana, and Ravalli County, Montana, by
15 and through their attorney, Alex Beal, Deputy Ravalli County Attorney, and for their claims
16 against the Defendants, state and allege as follows:

- 17 1. Plaintiff State of Montana is the body politic of Montana. Plaintiff Ravalli County is a
18 duly constituted political subdivision of the State of Montana.
- 19 2. Defendants are the owners of record of the parcel commonly known as 1706 Meridian
20 Road, Victor, Montana, 59875, also known as Parcel No. 894200, and also known as
21 Geocode 1565-18-2-01-05-0000, a parcel approximately 37 acres in size near the town
22 of Victor, Montana.
- 23 3. The Ravalli County Commission adopted Resolution No. 795 on August 5, 1995,
24 attached as exhibit "A". Paragraph A of that states:
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1 “Any person or persons desiring to construct a road or driveway or access onto a public
2 right of way under the jurisdiction of Ravalli County shall first apply for and be granted
3 a permit from the County Road Department.”

- 4 4. The State of Montana has adopted various regulations regarding encroachments onto
5 highways of the State. MCA §§ 7-14-2134 to 2138 (2007) govern the removal of
6 encroachments onto highways. Actions to remove an encroachment brought pursuant
7 to the above statutes must be in the name of the State of Montana.

- 8 5. Sometime prior to April 11, 2007, an access was built from the above parcel,
9 encroaching onto Meridian Road, a County Operated Roadway within a Public
10 Easement, and north of its intersection with Blair Lane.

- 11 6. This encroachment was built without obtaining a permit from the Ravalli County Road
12 Department. Correspondence sent April 16, 2007 and July 19, 2007 from the Ravalli
13 County Road Department notified Defendants of this violation.

- 14 7. Additionally, the Ravalli County Attorney's Office sent correspondence to the
15 Defendants and their counsel, respectively, on August 2, 2007 and August 13, 2007,
16 notifying them of the violation.

- 17 8. Notice to remove the encroachment within 10 days was mailed to the Defendants on
18 July 19, 2007.

- 19 9. Notice to remove the encroachment immediately was posted upon the residence of the
20 Defendants on August 1, 2007 by Traffic Operations Crew Leader Mike Nichols of the
21 Ravalli County Road Department, a copy of which is attached as Exhibit “B.”

- 22 10. As of the date of this Petition, the road encroachment has not been removed.

- 23 11. The road encroachment is in violation of Ravalli County Resolution 795 and MCA §§
24 7-14-2134 to 2138 (2007).
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WHEREFORE, Plaintiff respectfully requests the Court grant the following relief:

1. That the Defendants be ordered to apply for an approach permit from the Ravalli County Road Department, and to pay the \$100.00 application fee.
2. That pursuant to MCA § 7-14-2136 (2007), Defendants be ordered to pay the amount of \$10 per day from August 1, 2007 until the date the approach permit is approved by the Ravalli County Road Supervisor or the encroachment is removed, that Defendants be ordered to pay the Ravalli County Road Supervisor's costs, and that such judgment be attached as a lien upon the above referenced property.
3. For such other and further relief as the Court may deem just and proper.

DATED this ____ day of October, 2007.

GEORGE H. CORN, Ravalli County Attorney

By: Alex Beal, Deputy County Attorney

RAVALLI COUNTY, MONTANA
ROAD ACCESS RULES

Resolution No. 795

WHEREAS, Section 7-14-2101 MCA provides that the Board of County Commissioners may lay out, maintain, control and manage county roads and bridges within the County; and

WHEREAS, Section 7-14-2102, MCA provides that the Board of County Commissioners may in its discretion do whatever is necessary in the best interest of county roads; and,

WHEREAS, it is deemed beneficial to achieve maximum public use of street and road right of way consistent with the laws of the state of Montana, while providing maximum public safety, preserving the existing roadway investment and minimizing future conflicts between road and driveway approaches by addressing alignment, sight distance, drainage and design safety.

~~THEREFORE BE IT RESOLVED,~~ that the following rules pertaining to construction and maintenance of road and driveway approaches on Ravalli County street and road right of way are hereby adopted:

A. ROAD and DRIVEWAY APPROACH PERMIT. Any person or persons desiring to construct a road or driveway or access onto a public right of way under the jurisdiction of Ravalli County shall first apply for and be granted a permit from the County Road Department. Any such permit issued shall constitute an obligation that the permittee will perform his work in strict accord with acceptable construction practices and applicable Ravalli County Approach Specifications.

B. APPLICATION FEE. Any person or persons making application for a permit to construct, reconstruct, improve or expand an approach onto a public right of way shall pay a fee of \$25.00 for the approach permit. Any person or persons failing to apply for a permit prior to constructing or expanding an approach to a public right of way shall pay a fee of \$100.00 for the approach permit. Revenue from these fees shall be credited to the Road Fund to help defray the cost of inspection and administration.

C. APPROACH SPECIFICATIONS:

1. ALIGNMENT: Approaches shall intersect public streets or roads at right angles except in rare cases where the topography precludes and in no case shall the angle of intersection be less than sixty (60) degrees. Convenience and construction expense shall not be sufficient reason to construct an approach at less than ninety (90) degrees.

2. SIGHT DISTANCE: The desirable sight distance (SD) required for entering a road where the speed limit is 55 MPH (SD) is 940 ft, 45 MPH (SD) is 800 ft, 35 MPH (SD) is 640 ft.; and 25 MPH (SD) is 640 ft. In order to obtain the desirable sight distance it may be necessary to remove trees and vegetation from the right of way and/or property owned or controlled by the applicant. It may be necessary in some cases to excavate the cut slopes and banks on both sides of an approach to gain the desirable sight distance. Approaches should be avoided at sharp crest vertical curves or just beyond a sharp crest vertical curve or on a sharp horizontal curve. Permits may be issued for approaches with less than desirable sight distances providing every effort has been made to achieve the best sight distance possible.

3. DRAINAGE: Approach must slope away from the shoulder of the roadway, eight (8) inches in the first twenty-five (25) feet. This will allow the approach vehicle to see and be seen. It also provides a landing for stopping and starting. This will also prevent storm run-off from washing material into roadway. Barrow ditch drainage will be investigated on an individual

bases. Culvert size will be determined by the County Road Department. In no case shall a culvert be less than fifteen (15) inches in diameter.

4. **DESIGN SAFETY:** To allow safe and smooth ingress and egress, residential approaches shall be a minimum of sixteen (16) feet in width with a minimum of fifteen (15) foot radius flares at shoulders of the road. Commercial approaches and road approaches shall be a minimum of twenty-four (24) feet in width with a minimum of twenty-five (25) foot radius flares at shoulders of road. Approach side slopes shall be a minimum of 6:1 to prevent tripping of an errant vehicle.

D. **APPROACH PERMIT CONDITIONS:**

1. **TERM** Permits shall be in full force and effect from the date approved until revoked as herein provided.

2. **REVOCATION.** Permits may be revoked by County upon giving explanation and thirty (30) days notice to Permittee by ordinary mail directed to the address shown in the application hereto attached, but the County reserves the right to revoke a permit without giving said notice in the event Permittee breaks any of the conditions or terms set forth herein.

3. **COMMENCEMENT OF WORK.** No work shall be commenced until Permittee notifies the Road Department when he proposes to commence work.

4. **CHANGES IN HIGHWAY.** If the County changes road or highway necessitating changes in intersection or approaches constructed under a permit, the County will make said changes leaving the intersection or approach in as good or better condition than before.

5. **COUNTY SAVED HARMLESS FROM CLAIMS.** In accepting a permit the Permittee, its/his successors or assigns, agree to protect the County and save it harmless from all claims, actions, persons, corporations or property by reason of the performance of any such work, character of materials used, or manner of installations, maintenance and operation, or by the improper occupancy of said highway right of way, and in case any suit of action is brought against the County and arising out of, or by reason of, any of the above causes, the Permittee, its/his successors or assigns, will, upon notice to it/him of the commencement of such action, defend the same at its/his sole cost and expense and satisfy any Judgement which may be rendered against the County in any suit or action.

6. **PROTECTION OF TRAFFIC.** Insofar as the interest of the County and the traveling public are concerned all work performed under a permit shall be done in accordance with the requirements of the "Manual on Uniform Traffic Control Devices". The permittee shall be responsible for maintaining proper and adequate work zone signing for the project. Any existing road surface damaged by the permittee shall be repaired to the satisfaction of the County Road Department.

7. **HIGHWAY DRAINAGE.** If the work done under this permit interferes in any way with the drainage of the highway or road affected, Permittee shall, at its/his own expense, make such provisions as the County may direct to take care of said drainage.

8. **RUBBISH AND DEBRIS.** Upon completion of work contemplated under this permit, all rubbish and debris shall be immediately removed and the roadway and roadside left in a neat and presentable condition satisfactory to the County.

9. REMOVAL OF APPROACHES OR INTERSECTIONS. Unless waived by the County, upon termination of a permit, the Permittee shall remove the approach or intersection contemplated by a permit and restore the premises to the condition existing at the time of entering upon the same under a permit, reasonable and ordinary wear and tear and damage by the elements, or by circumstances over which the Permittee has no control, excepted.

10. MAINTENANCE AT EXPENSE OF PERMITTEE. Permittee shall maintain, at its/his sole expense the approach or intersection for which a permit is granted, in a condition satisfactory to the County.

11. COUNTY TO BE REIMBURSED FOR REPAIRING ROADWAY. Upon being billed therefor Permittee agrees to promptly reimburse County for any expense incurred in repairing surface of roadway due to settlement at installation, or for any other damage to roadway as a result of the work performed under a permit.

12. FINAL INSPECTION. Within one week after construction of a permitted approach or intersection the permittee shall request a final inspection and approval from the County Road Department. The Department shall inspect, approve and so note on the permit. In the event the work is not in accordance with the above stated Approach Specifications the department will indicate corrections or improvements to be made. When corrections or improvements have been made permittee shall again request final inspection. Permits which do not have final inspection approval noted and signed by a County Road Department authorized representative within twelve months of date of issue shall be considered revoked and void.

E. RURAL SPECIAL IMPROVEMENT DISTRICTS (RSID'S):

Work performed under a Rural Special Improvement District (RSID) contract awarded by Ravalli County is excluded from the provisions of this resolution. RSID work shall conform to the approved contract plans and specifications. This provision does not include utility construction, repair or relocation associated with the RSID construction and performed by persons other than the RSID contractor.

F. PENALTY:

Noncompliance with this resolution or any provision thereof shall be prosecuted under Title 60, Chapter 5 of the Montana Codes Annotated, 1983, as well as sanctions under Section 45-6-101 MCA and Section 45-8-111 MCA.

DATED this 5th day of August 1996

BOARD OF COUNTY COMMISSIONERS
Ravalli County

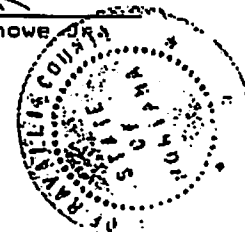
Jerry L. Allen
Chairman, Jerry L. Allen

"Smut" Warren
Commissioner, "Smut" Warren

John M. Atthowe
Commissioner, John M. Atthowe

ATTEST:

Betty T. Lund
Clerk and Recorder, Betty Lund





Ravalli County Road Department

244 Fairgrounds Road • Hamilton, Montana 59840
(406) 363-2733

COUNTRY ROADS TAKE ME HOME

NOTICE TO REMOVE ENCROACHMENT

Notice is hereby given pursuant to §7-14-2135 MCA that the encroachment upon public road or highway described below must be removed immediately.

Notice is given to the following occupant or owner of the land or the person owning or causing the encroachment:

Name and Address:

TOM DOBERSTEIN
1706 MERIDIAN ROAD
VICTOR, MT 59875

The name, location, and breadth of the road or highway encroached upon are described and identified as follows:

MERIDIAN ROAD, A COUNTY OPERATED ROADWAY
WITHIN A PUBLIC EASEMENT; NORTH
OF BLAIR LAKE, EAST SIDE OF ROADWAY.

The place and extent of the encroachment is specified as follows:

UNLAWFULLY INSTALLED ACCESS ONTO
MERIDIAN ROAD, AS NOTED IN
CORRESPONDENCE DATED 16 APRIL 2007
AND 19 JUNE 2007; ACCESS ONTO
COUNTY OPERATED ROADWAYS REQUIRE
APPROVED PERMIT ISSUED BY THE COUNTY.

The above-described encroachment must be removed immediately. Failure to immediately remove the encroachment by a person who causes, owns, or controls the encroachment will subject such person to penalties of \$10 for each day the encroachment continues, and may result in prosecution by the County Attorney for the State of Montana, with all costs of removal of the encroachment and costs of suit to be borne by said person. §§7-14-2136 - 2138, MCA.

Dated: 01 August 2007

[Signature]
Ravalli County Road Supervisor

I certify that I delivered the foregoing Notice to Remove Encroachment by:

- ☒ posting it upon the residence identified above (required for Ravalli County residents)
☐ posting it on the encroachment (for out-of-county residents only)

Dated: August 1, 2007

[Signature]